IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

CRP.No. 645 of 2000(H)

AGAINST THE ORDER DATED 27//9/1999 IN IA 339/98 IN OS.493/1994
OF PRINCIPAL SUB COURT,KOLLAM

REVN. PETITIONER: PETITIONER: PLAINTIFF:

ARAVINDAKSHAN NAIR,
DEEPTHI, KANNIMEL CHERRY,
KILIKOLLOOR VILLAGE, KOLLAM.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS: RESPONDENTS: DEFENDANTS:
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1. SUKUMARAN NAIR, SRUTHI,
KUREEPUZHA, RAMANKULANGARA,
KAVUNADU P.O., KOLLAM.

2. SULEKHADEVI, SRUTHI, KUREEPUZHA,
RAMANKULANGARA, KAVANADU P.O.,
KOLLAM.

3. DR.M.N.MUHAMMED IBRAHIM,
A.M.M.HOSPITAL AND MODERN CLINICAL LABORATORY,
KANNIMEL CHERRY, KILIKOLLOOR VILLAGE,
KOLLAM.

R3 BY ADV. SRI.V.R.REJITHKUMAR

THIS CIVIL REVISION PETITION COME UP FOR ORDERS ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 645 OF 2000

Dated this the 5th day of December, 2007

O R D E R

The plaintiff in O.S.No.473 of 1994, on the file of the Sub Court, Kollam is the revision petitioner herein. He filed the suit against the respondents for specific performance of an agreement to sell 19 cents of land for a consideration of Rs.4 lakhs. It is also stated that contrary to the agreement for sale in favour of the plaintiff, defendants 1 and 2 sold the property to the third defendant. One-tenth court fee was paid at the time of filing the suit. It is stated at paragraph 7 of the Memorandum of Revision thus:

> "The case was posted for payment of balance court fee and for issues on 21.2.1997 on which date petitioner and his counsel were not present. No representation was also made on behalf of the petitioner and accordingly the suit was dismissed for default."

2. I.A.No.339 of 1998 was filed by the plaintiff to restore the suit, which was dismissed for default. It would appear that there was delay. Learned counsel appearing for the petitioner is not in a position to say whether a separate application was filed for condonation of delay. The court below disposed of the application on 27.9.1999 holding thus:

> "This application is to restore the suit dismissed for non payment of balance court fee on 21.2.97. This I.A is hence barred by limitation. Hence this application is dismissed as time barred."

If the dismissal of the suit was for default, an application could be filed for restoration of the suit. Even if no separate application is filed for condonation of

delay, in appropriate cases, the Court shall consider whether sufficient reasons are made out for condonation of delay and sufficient averments are there in the application to found a ground for restoration. The court below has not said anything about the merits of the application. If, as stated in the Memorandum of Revision, the case was posted to 21.2.1997 for settlement of the issues and for payment of balance court fee, such an order would be illegal and opposed to Section 4A of the Kerala Court Fees and Suit Valuation Act. As per Section 4A, the balance court fee need be paid only within a period of fifteen days from the date of framing of the issues. If issues were settled and the balance court fee was not paid within time, normally, the Court would have rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure.

Since the facts are not clear from the order impugned, I am inclined to set aside the order and direct the court below to pass a speaking order in I.A.No.339 of 1998. The Civil Revision Petition is accordingly allowed and the order impugned is set aside. The court below shall dispose of I.A.No.339 of 1998 afresh by passing a speaking order.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 645 OF 2000

O R D E R

5th December, 2007